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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

RONNIE EARL HOWELL,

Defendant and Appellant.

2d Crim. No. B213564
(Super. Ct. No. F423544)
(San Luis Obispo County)

Ronnie Earl Howell appeals a judgment of conviction of second degree burglary, with a finding that he served three prior prison terms. (Pen. Code, §§ 459, 667.5, subd. (b).)¹ We appointed counsel to represent him in this appeal. After counsel's examination of the record, he filed an opening brief raising no issues. (*People v. Wende* (1979) 25 Cal.3d 436, 441.) On April 10, 2009, we advised Howell that he had 30 days within which to personally submit any contentions or issues that he wished to raise on appeal. We have received a response from him contending that 1) insufficient evidence supports his conviction; 2) the burglary victim's trial testimony is not credible; 3) the prosecutor committed misconduct; and 4) he did not receive the effective assistance of counsel. Pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, 123-124, we present a factual and procedural summary of the case, and a brief discussion of Howell's contentions.

¹ Further statutory references are to the Penal Code unless stated otherwise.

FACTS AND PROCEDURAL HISTORY

On October 22, 2008, the San Luis Obispo County prosecutor charged Howell and codefendant Dennis Perry with second degree burglary (count 1), possession of methamphetamine (count 2), and possession of 28.5 grams or less of marijuana (count 3). (§ 459; Health & Saf. Code, §§ 11377, subd. (a), 11357, subd. (b).) The prosecutor also alleged that Howell served four prior prison terms within the meaning of section 667.5, subdivision (b).

Perry entered into a plea agreement with the prosecutor and received a grant of probation and county jail confinement in exchange for pleading guilty to second degree burglary. Howell waived his right to a jury trial and proceeded with a court trial.

At trial, Charles Moncrief testified that he entered his office in the early morning of October 6, 2008, following an exercise class. Moncrief placed his personal belongings, including his wallet, on a desk, and then proceeded to shower in the office shower facility. When he completed his shower, Moncrief heard footsteps, opened the door, and saw Howell and Perry running down the stairs. Moncrief did not know them and they did not have permission to be there. Moncrief noticed that his wallet had been moved and his currency was missing. He followed the men and obtained the license plate number of their vehicle.

A San Luis Obispo police officer saw the vehicle and stopped it. The officer searched the vehicle and its occupants and found drugs and money. Moncrief testified that he believed he had approximately \$140 or \$160 in his wallet that day.

The trial court found Howell guilty of second degree burglary (count 1), but not guilty of possession of a controlled substance (count 2), or possession of less than 28.5 grams of marijuana (count 3). (§ 459; Health & Saf. Code, §§ 11377, subd. (a), 11357, subd. (b).) The court bifurcated trial regarding the prior prison term allegations. At the bifurcated hearing, the prosecutor offered certified documents regarding Howell's prior felony convictions and prison terms. The court found that three of the four prison term allegations were true.

Howell requested to be sentenced immediately and waived his right to a presentence probation report. The court sentenced him to a midterm sentence of two years for second degree burglary and one year for the 2002 prison term. The court stayed sentence regarding the two remaining prison term allegations "to achieve parity" with the sentence imposed upon codefendant Perry. The court also imposed a \$400 restitution fine and a \$400 parole revocation restitution fine, and awarded Howell 111 days of presentence custody credits. (§§ 1202.4, subd. (b), 1202.45.)

DISCUSSION

I.

In determining the sufficiency of evidence to support a judgment, we view the evidence and draw all reasonable inferences therefrom to determine whether reasonable and credible evidence supports the decision of the trier of fact. (*People v. Boyer* (2006) 38 Cal.4th 412, 480.) We do not reweigh the evidence nor do we reassess the credibility of witnesses. (*Ibid.*) "Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact." (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) The testimony of a single witness is sufficient to support a conviction. (*Ibid.*)

Moncrief testified that Perry and Howell were present without permission in his office that morning. When they saw him, they fled. He then noticed that his wallet had been disturbed and his money was missing. The police officer who stopped and searched Howell found currency on his person. Moncrief stated that the currency was in the same denominations as he had in his wallet. This evidence is sufficient to support Howell's conviction of second degree burglary.

II.

Howell claims the prosecutor committed misconduct by providing only photographs of the currency seized, and not the actual currency. Howell has not established that this was a deceptive or reprehensible method to persuade the factfinder. (*People v. Gurule* (2002) 28 Cal.4th 557, 657.) We reject the contention.

III.

Howell argues that he did not receive the effective assistance of counsel, but fails to set forth any asserted error by his attorney. We therefore do not discuss the contention.

IV.

The trial court erred, however, by staying the two prior prison term allegations. (*People v. Garcia* (2008) 167 Cal.App.4th 1550, 1561.) The court has discretion to impose or strike a section 667.5, subdivision (b) prison term enhancement (§ 1385, subd. (a); *Garcia*, at p. 1561.) It is clear from the colloquy during sentencing that the court did not intend to punish Howell for two of the three prison term enhancements.

The judgment is modified to strike the second and third prior prison term allegation. The trial court shall prepare an amended abstract of judgment reflecting the modification and forward the amended abstract to the Department of Corrections. The judgment is otherwise affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

COFFEE, J.

Roger D. Randall, Judge^{*}

Superior Court County of San Luis Obispo

Robert D. Peterson, under appointment by the Court of Appeal, under
appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

^{*} (Retired Judge of the Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)